

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MTC CONSTRUCTION, INC., d/b/a	)	
K BATES STEEL SERVICES, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:04CV01536 ERW
	)	
GATE CITY STEEL, INC.,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court upon Plaintiff's Motion to Compel [doc. #12]. A hearing was held on June 22, 2005, and the Court heard arguments from the parties on the Motion.

In this contract action, Plaintiff MTC Construction, Inc. ("Plaintiff") requests that this Court enter an order compelling Defendant Gate City Steel, Inc. ("Defendant") to produce a certain asset purchase agreement entered into by Defendant and Gerdau Ameristeel, as identified in Plaintiff's Third Request for Production to Defendant (the "Asset Purchase Agreement"). According to Plaintiff, the Asset Purchase Agreement is discoverable because it is relevant to the merits of the impracticability defense raised by Defendant in this case. In opposing the Motion, Defendant argues that the Asset Purchase Agreement is not relevant to any claims or defenses in this action.

Pursuant to Federal Rule of Civil Procedure 26, "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." Fed. R. Civ. P. 26(b)(1). The Court is persuaded by Plaintiff's argument that the Asset Purchase Agreement is relevant to Defendant's impracticability defense. The Court also recognizes the confidential nature of such agreements. Therefore, the Court will order that the Asset Purchase Agreement be produced, but

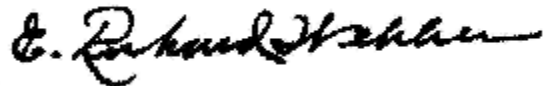
only after an adequate protective order has been entered.

Accordingly,

**IT IS HEREBY ORDERED** that, within **FIVE (5)** days of the date of this Order, the parties shall file an agreed protective order governing the Asset Purchase Agreement stipulating that said Agreement is for “attorneys’ eyes only.”

**IT IS FURTHER ORDERED** that, within **FIVE (5)** days of the date upon which the agreed protective order is entered by this Court, Defendant shall produce to Plaintiff said Asset Purchase Agreement.

Dated this 23rd day of June, 2005.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written above a horizontal line.

E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE